



The Federal Supreme Court (F S C) has been convened on 11.14.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi , Aboud Salih Al-temimi , Michael Shamshon Qas Georges, Mohammed Rijab AL-Kubaisi and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

Plaintiff: (kaf.ain.ain) – his agents the barristers (dal.waw.ain) & (ain.kaf.ha) & (alif.ain.ta) either singly or in combination.

Defendant: the Head of AL-Diwanyia governorate council/ being in this capacity – his agent the barrister (ra.ain.alif).

Claim

The agents of the plaintiff claimed before the FSC in case No. (99/federal/2017) that the defendant issued decision in No. (285) on (11.3.2015) according to the administrative order from AL-Diwanyia governorate council numbered (10819) on (11.24.2015) to end the membership of the plaintiff from AL-Diwanyia governorate council, and the ICR according to its decision No. (40) On (5.13.2017) had cancelled the aforementioned. Whereas the defendant refrained executing the ICR decision (voted on with simple majority) applying to the text of article (20) of the governorates incorporated into a region law No. (21) for 2008 (amended), and whereas the decision of the defendant were taken contrariwise of the governorates incorporated into a region law, and the ICR specialize constitutionally and legally in cancelling the decision token by the governorates councils, and more than that in dissolving the governorates councils. Therefore, the agents of the plaintiff requested from the FSC to

oblige the defendant/ being in this capacity by a judicial judgment to execute the decision of the ICR No. (40) For 2017 and to cancel the decision of the governorate council No. (285) on (11.3.2015) and regarding the plaintiff as a member in the governorate council effective from the date of ending his membership with all his rights, and to burden the defendant the fees, expenses and the advocacy fees. The defendant answered the petition of the case according to his written draft presented to the FSC on (10.22.2017) requested to reject the case with burdening the plaintiff all the expenses and advocacy fees, because the governorate council voted on the decision No. (285) on (11.3.2015) to authorize his Head by taking the legal procedures against the absented members in the sessions of the council, and the plaintiff had fall back to the administrative judiciary court and a decision issued to reject the case formally, and after that he appealed the decision of the administration judiciary court, and the decision issued final and approved in case No. (1650/qaf/2015) on (6.19.2016) to confirm the decision of the supreme administration court. The decision issued from the ICR in No. (40) for 2017 was based on a recommendations the committee of facts detection which forms in the ICR, and it was not mentioned in the text of the recommendations to cancel the decision No. (285) on (11.3.2015) and the traces based on it, and many letters issued from the ICR in this concern and the last what issued because of the debate against the decision No. (40) For 2017 is the letter of the ICR No. (1/5/8727) on (8.16.2017) which includes cancelling all the letters issued from the ICR which interpret the aforementioned decision and the administrative procedures which violates the decision (40) for 2017 which subsequent its issuance, because the ICR is not concerned to interpret its texts. The parliamentary integrity committee which formed from it the committee of facts detection had confirmed according to its letter (13/869) on 8.20.2017 on the decision of the ICR No. (1/5/8727) on (8.16.2017), as well as the confirmation on the previous letter of the committee No. (13/562) on (6.5.2017) which included to cancel the decision of the governorate council – the case subject – without basing on it any previous traces because of implementing the decision of the governorate council No. (285) on (11.13.2015) issued in letter No. (26/239) on (11.5.2015) according to the decision of the governorate council No. (422) on (5.23.2017). The ICR was notified with that, and what the council of the governorate in AL-Diwaniya did was includes the authorities which granted to it in the governorates incorporated into a region law No. (21) For 2008

(amended), and the subject is out of the specialty of the FSC according to provisions of article (93) of the constitution and the bylaw of the FSC. The specialties of the FSC are related in interpreting the constitution articles, therefore, this case is lacking to its legal formality. The court called upon the two parties in the case, and the three agents of the plaintiff attended according to the power of attorney which attached to the file of the case. And for the defendant the agent (ra.ain) attended according to his power of attorney, and the public in presence pleading proceeded, and the agents of the plaintiff repeated what listed in the petition of the case and requested to judge according to it, and to burden the plaintiff all the expenses and the advocacy fees. As well as the agent of the defendant repeated his answering draft and requested to reject the case and to burden the plaintiff the expenses and advocacy fees. Therefore, whereas nothing left to be said, the end of the pleading made clear and the decision issued publicly.

The decision

After scrutiny and deliberation by the FSC, the court found that the agents of the plaintiff requested in the petition of their case from the FSC to judge by obliging the defendant to not issuing a judicial decision to execute the decision of the ICR No. (40) Dated on (5.13.2017) which included cancelling the decision of AL-Diwanyia governorate council No. (285) on 11.30.2015 and the traces based on it because it is violates the constitution and laws in effect. Which included (authorizing the Head of governorate council Mr. (jim.sin.jim) exclusively to take all the legal and administrative procedures about not attending members to the sessions of the council and their absence without a justified excuse and else, according to what listed in the governorates incorporated into a region law No. (21) For 2008 (amended) and the bylaw, and considering the plaintiff a member in the governorate council effective from the date of ending his membership with his full rights). And to burden the defendant the expenses, fees and advocacy fees. The FSC finds that its specialties are restricted in article (93) of Republic of Iraq constitution for 2005 and in article (4) of the FSC law No. (30) For 2005, and not among these specialties to take a decision about the aforementioned request of the plaintiff, in addition to that the specialty of the FSC which listed in the governorates incorporated into a region law No. (21) For 2008 mentioned exclusively I article (31/11th/3) of it, and this specialty is not to take decision in the request of the plaintiff, as well as the

reviewing in the subject of the plaintiff's case is out of the FSC specialty. Accordingly, the FSC decided to reject the case of the plaintiff for Non-specialty, and to burden him the expenses of the case and the advocacy fees for the agent of the defendant the barrister (ra.ain.alif) amount of one hundred thousand Iraqi dinars. The decision issued decisively and unanimously. The decision made clear on 11.14.2017.